



Cookman Law

Estate planning for complex family situations

ELLEN S. COOKMAN, ESQ.

Special Needs Trusts and ABLE accounts

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- LL.M., Estate Planning, Golden Gate University
- Law Clerk, Chief Judge Anthony J. Scirica, Third Circuit Court of Appeals (Philadelphia, PA)
- California State Bar No. 227833
- Parent of child with special needs

Which Public Benefits does Child Receive?

Income Stream

Supplemental Security Income (SSI)

- **Resource limit:** \$2000
- **Income limit:** \$1,133/mo
Earned income decreases SSI 50¢/every \$1 of income; *unearned* income decreases SSI \$1/every \$1 of income

Health Insurance

Medi-Cal (Medicaid)

- **Resource limit:** *none! (as of 1/1/2024)*
- **Income limit:** approx. \$1670/mo
Includes *earned and unearned* income

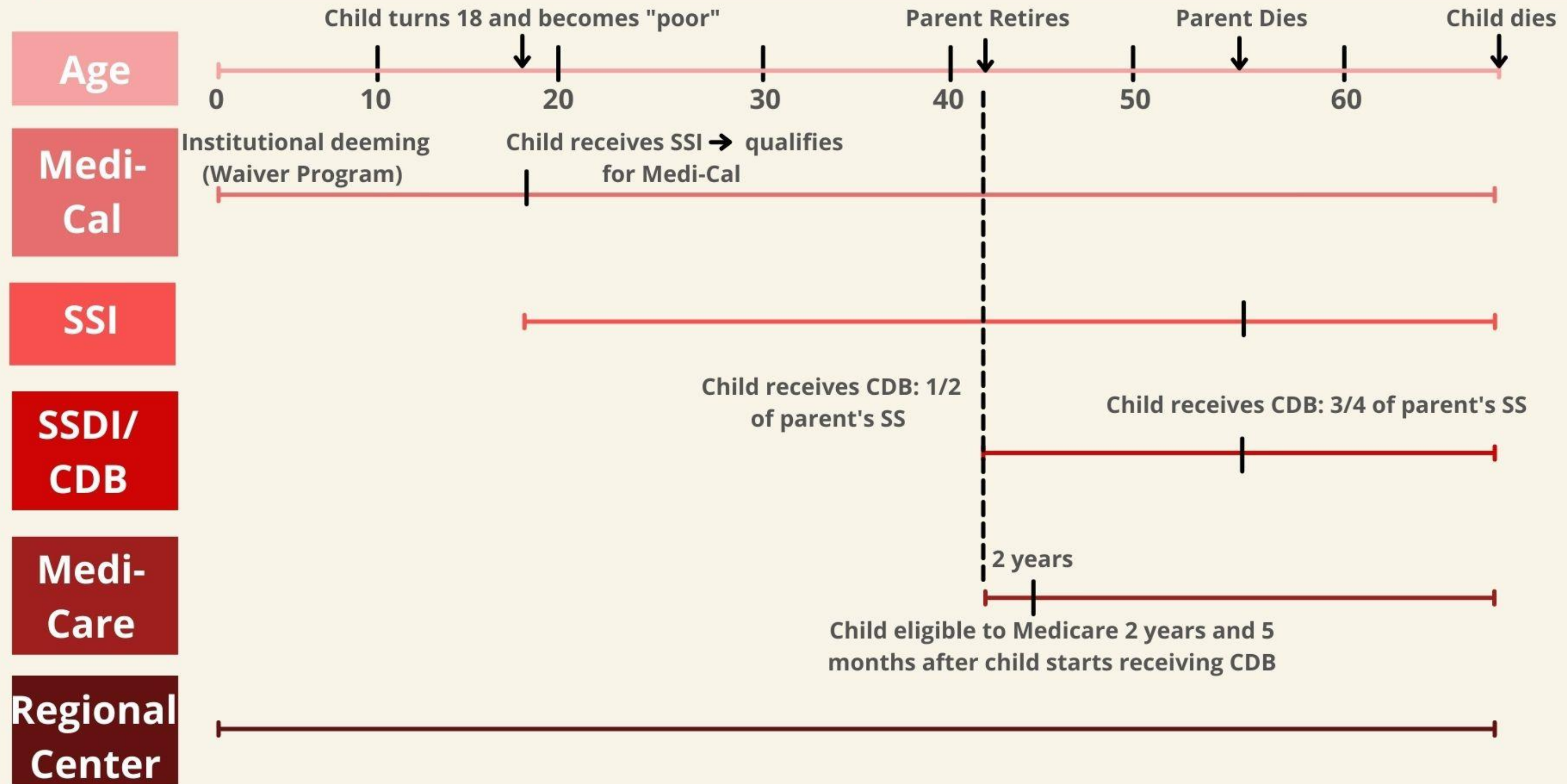
Social Security Disability Insurance (SSDI)/CDB Benefits

- **Resource limit:** none
- **Income limit:** \$1,470/mo
Only *earned* income interferes

Medicare Benefits

- **Resource limit:** none
- **Income limit:** none
Note: higher income → higher monthly adjustment amount

Public Benefits Timeline



Special Needs Trust

- Irrevocable trust
- Holds assets for disabled person's benefit
- Someone else manages the trust
- DOES NOT interfere with public benefits
- Like a safety net!

Which Type to Establish?



THIRD PARTY



FIRST PARTY

Different Types of SNTs

	Source of Funds	Who Establishes	Distribution on Death
Third Party SNT	Anyone except beneficiary	Anyone except beneficiary	Grantor's wishes
First Party (d)(4)(A) SNT	Disabled beneficiary's funds before age 65	Beneficiary, parent, grandparent, Guardian, Court	Medi-Cal payback; then remainder beneficiaries
(d)(4)(C) Pooled SNT	Disabled beneficiary's funds	Beneficiary, parent, grandparent, Guardian, Court	Non-profit Trustee; <i>or</i> , Medi-Cal payback, then remainder beneficiaries

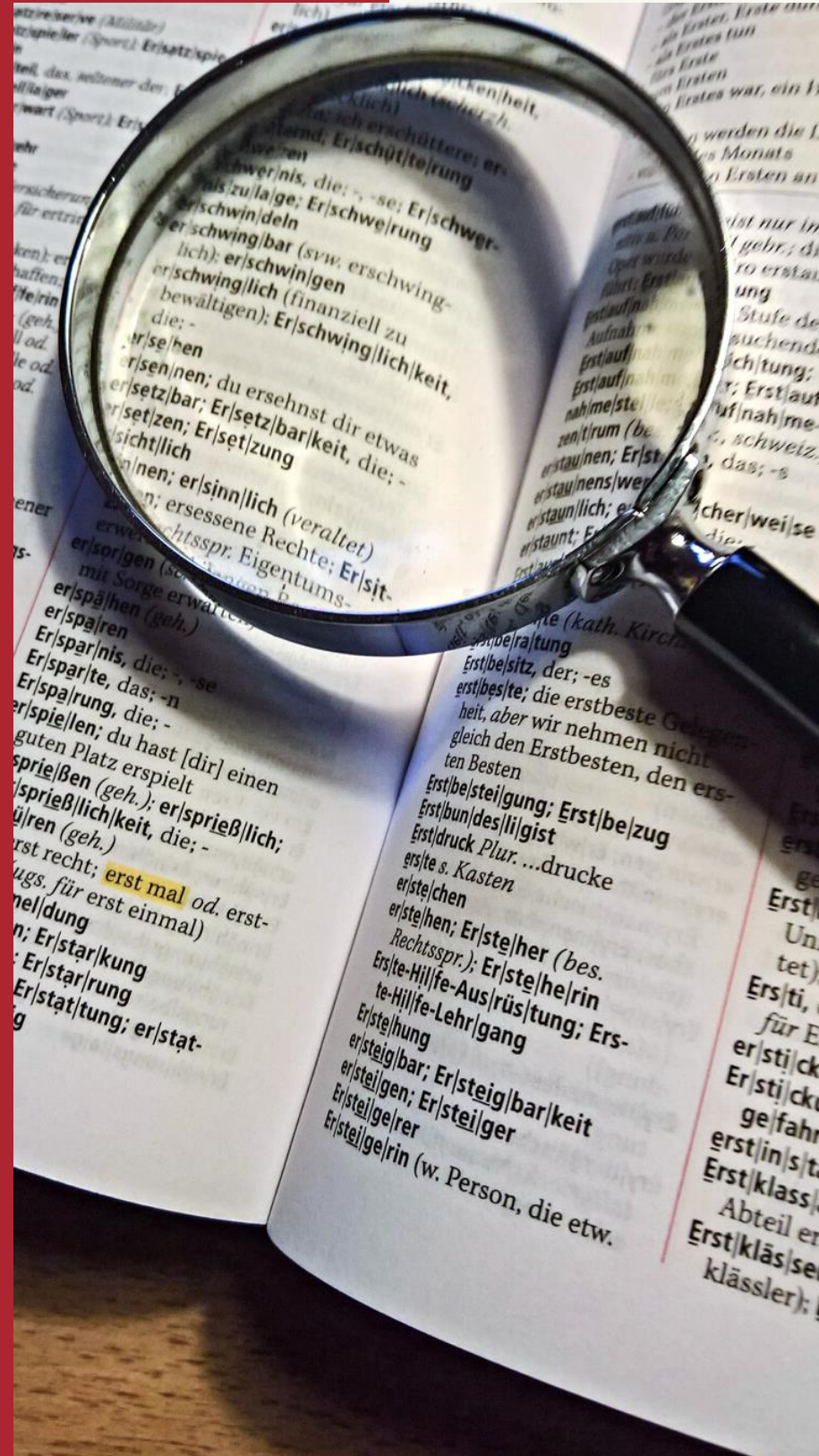


Choice of Trustee

- Family Member
- Friend
- Private Professional
Fiduciary
- Bank
- Nonprofit
- Pooled Trust
- Combination

Oversight Available for SNT ?

- Typically NO court involvement
- Trust Protector
- Co-Trustees
- Advisory Committee



Memorandum of Intent

(separate from SNT)

Informal letter from parent:

- What makes child happy/sad?
- Food restrictions?
- Housing preferences
- Favorite Activities



CalABLE vs. Third Party SNT vs. First Party SNT

Issues	CalABLE Account	Third Party SNT	First Party SNT
Who can use?	Only persons disabled before age 26	Any person with a disability	A person with disability under age 65*
Who can fund?	Anyone, including person with disability	Anyone, except person with disability (must use First Party SNT)	The person with a disability, conservator, guardian, agent, court
How many can a person have?	One	Unlimited	Unlimited
Who can control?	Person with a disability, guardian, Conservator, or agent	Anyone except the person with a disability and their spouse	Anyone except the person with a disability and their spouse
Medi-Cal Payback?	No	No	Yes
Who can inherit on death of person with disability?	Estate of disabled person	Whomever is named in the document	Whomever is named in the document

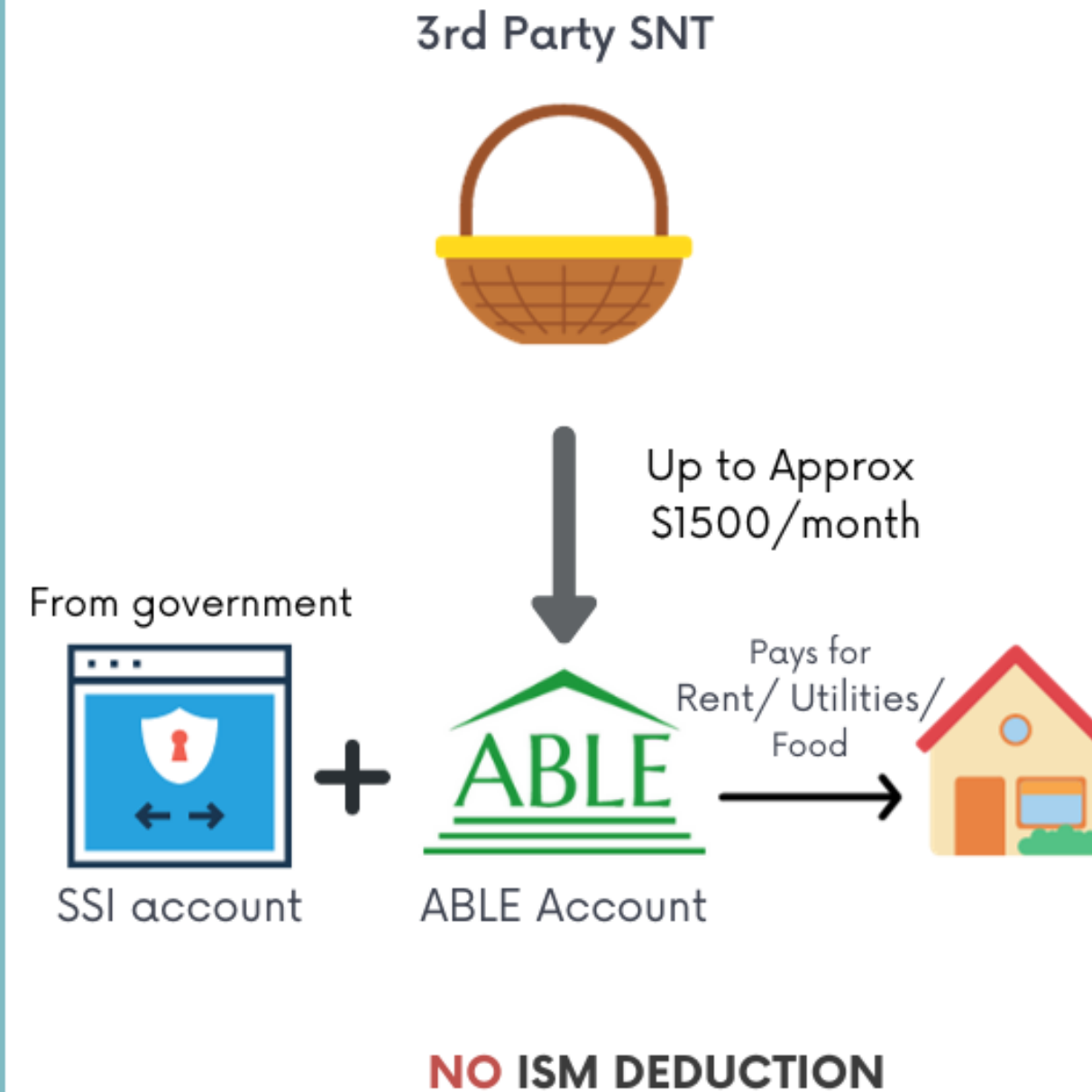
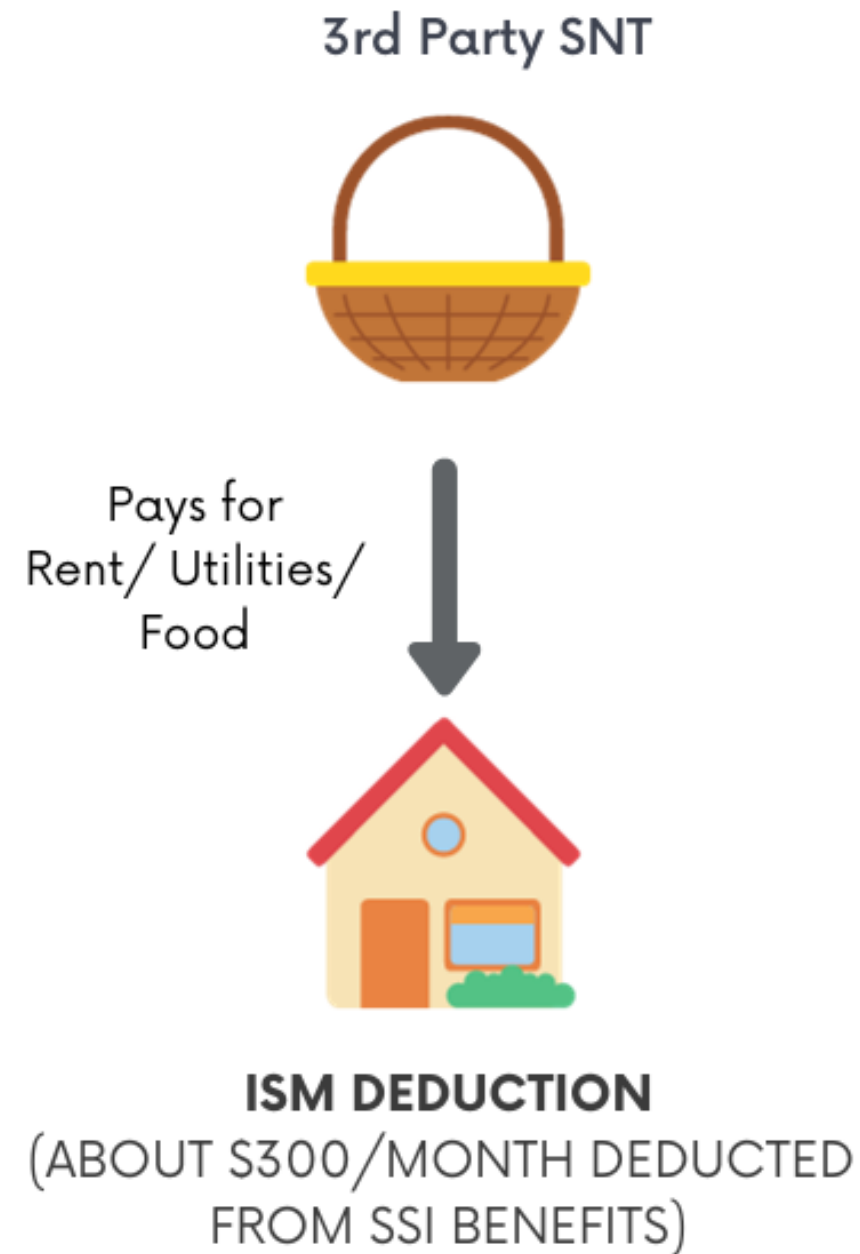
CalABLE vs. Third Party SNT vs. First Party SNT

Issues	CalABLE Account	Third Party SNT	First Party SNT
How much can fund in a year?	\$18,000 (or annual gift exemption)	Unlimited	Unlimited
Is funding gift tax-free?	Yes	No	No
Is there a cap on how much can be in account?	Yes, currently \$100,000 Limitation for SSI recipients and up to \$529,000 for Medi-Cal only recipients	No	No
How is income taxed?	No income tax	Tax as non-grantor trust as highest marginal tax rate	Tax as a grantor trust at beneficiary's rate
What type of distributions can be made?	"Qualified disability expenses"	No limitation except for certain disbursements may reduce for eliminate SSI or Medicaid Eligibility	Sole Benefit

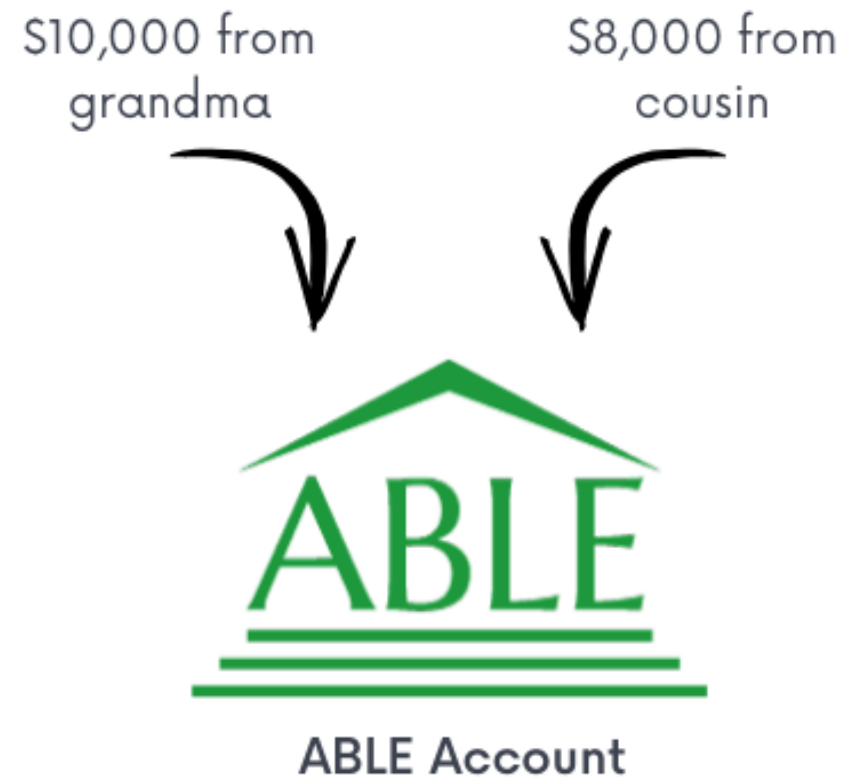
Distributions from 3rd Party SNTs to CalABLE Accounts

- SNT can give Trustee authority to fund or distribute to CalABLE account
- Distributions to CalABLE account are not income to the designated beneficiary
- Trustees should keep in mind there's no beneficiary designation for CalABLE Accounts; SNT has more control upon beneficiary's death

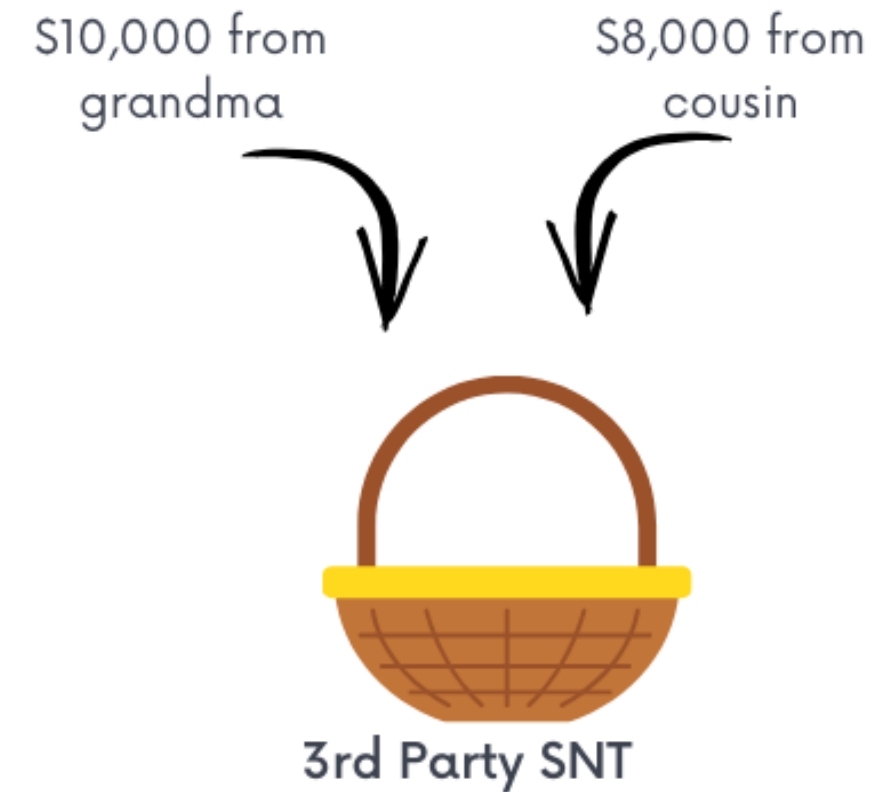
Using ABLE Account to Preserve SSI Benefits



Gift Taxes: ABLE Accounts vs SNTs



- Both gifts qualify for gift tax annual exclusion (up to \$18,000)
- No tax returns or accounting required



- No Annual exclusion available
- Grandma & Cousin must both file gift tax returns (form 709) the following year in April
- Trustee must obtain Tax ID #
- Start filing yearly fiduciary tax returns

About Cookman Law, PC



- ▶ **Palo Alto law firm serving all of California**
- ▶ **3 attorneys, 7 support staff**
- ▶ **We charge a flat fee for estate planning, special needs planning and trust administration**
- ▶ **We do not assist with public benefits applications**

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